



October 15, 2002

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco - Legal Services  
Post Office Box 2570  
Waco, Texas 76702-2570

OR2002-5830

Re: Request for copies of reports from Samantha Weido

Dear Mr. Johnson:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 173104.

The Waco Police Department (the "department") received a request for offense reports from a named person. The department has three offense reports and two arrest reports that are responsive to the request. The department has released offense report number 02-020386, some of the basic information in offense report numbers 02-056087 and 02-010415, and redacted copies of the arrest reports. The department asserts that the requested information is excepted from disclosure based on sections 552.101, 552.108, and 552.130 of the Government Code.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that offense report numbers 02-056087 and 02-010415 pertain to pending cases. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold offense report numbers 02-056087 and 02-010415 from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

The arrest reports contain information excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license number, vehicle identification number, and license plate number under section 552.130. The state and year found in boxes 45 and 46 of arrest report number 255849 are not excepted under section 552.130 and must be released.

Finally, the department asserts that the social security numbers in the two arrest reports are confidential under federal law. A social security number may be confidential *if it was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.* 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). You cite to section 405(c)(2)(C)(vii) itself as the statute authorizing the department to obtain and maintain social security numbers. However, this section cannot be relied on as the sole basis for withholding social security numbers. You must first point to an independent provision of law enacted on or after October 1, 1990 that authorizes the department to obtain and maintain social security numbers. Section 405(c)(2)(C)(vii) is not a law that authorizes the department to obtain or maintain social security numbers. Once you demonstrate the legal basis for the department's possession of the social security number, section 405(c)(2)(C)(vii) is activated to render the social security number confidential. You have cited no such law here; therefore, we have no basis for concluding that the social security numbers are confidential. The department must release the social security numbers from the arrest reports.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

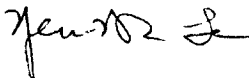
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/cwt

Ref: ID# 173104

Encl. Submitted documents

cc: Mr. George Wetzel  
1521 Liveoak  
Waco, Texas 76708  
(w/o enclosures)